

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SINGULARDTV GMBH,

Plaintiff,

v.

JOHN DOE,

Defendant.

Case No. 1:21-cv-6000

**DECLARATION OF PATRIK ALLENSPACH IN SUPPORT OF
MOTION TO INTERVENE OR, IN THE ALTERNATIVE, SUBSTITUTE COUNSEL**

Pursuant to 28 U.S.C. § 1746, I, PATRIK ALLENSPACH, state as follows:

1. I am a representative of SingularDTV GmbH (“SingularDTV” or the “Company”) and its Resident Signatory.

2. I submit this Declaration in support of SingularDTV’s Motion to Intervene, or, in the Alternative, Substitute Counsel in the above-captioned action: *SingularDTV, GmbH v. John Doe*, No. 21-cv-6000 (S.D.N.Y. filed July 13, 2021) (the “SDNY Action”).

3. SingularDTV was founded in December 2016 for the purposes of “development, marketing, distribution and licensing of software, in particular the creation of a blockchain and Ethereum-based production and distribution platform, as well as the development, marketing, distribution and licensing of high-quality film and TV content.” A true and correct copy of SingularDTV’s Articles of Association is attached as Exhibit 1.

4. SingularDTV’s share capital is divided among Zachary LeBeau, Joseph Lubin, and Arie Levy-Cohen. Messrs. LeBeau and Lubin each have 43-percent ownership shares in SingularDTV, while Mr. Levy-Cohen owns the remaining 14 percent. In addition to their

ownership interests, each of the founders acted as managing directors of the board (the “Board”) for SingularDTV and held executive positions at the company. Specifically, Mr. LeBeau acted as the company’s chief executive officer (“CEO”), Mr. Levy-Cohen as its chief financial officer (“CFO”), and Mr. Lubin as its chief technology officer (“CTO”). In late 2018, Kimberly Jackson, Mr. LeBeau’s common-law wife, was engaged as an independent contractor to act as SingularDTV’s chief operating officer (“COO”). Ms. Jackson was never given signatory authority for the company.

5. Two months before founding the company, SingularDTV’s founders launched an Ethereum-based cryptographic token, SNGLS, to raise money for a range of initial projects, including an original television series, a documentary division, a digital-rights-management platform, and a video-on-demand distribution portal. The launch generated one billion SNGLS tokens, all of equivalent value, through a smart-contract system. Half of those tokens were purchased at launch at a value of 0.00116 ETH per token, raising approximately 580,000 ETH (worth roughly US \$7.5 million at the time). The remaining tokens were allocated to the Company and to SingularDTV’s early financial contributors.

6. Since the inception of SingularDTV and the launch of SNGLS, the relationship between Mr. LeBeau and the other two founders has soured. This fracture was caused primarily by Mr. LeBeau’s and Ms. Jackson’s attempts to control the company through a separate New York business entity that they control—SingularDTV, LLC—which is wholly owned by Ms. Jackson and does business under the trade name Breaker LLC. Specifically, Mr. LeBeau himself initiated payments from SingularDTV to Breaker LLC, for which the rationale was not comprehensively documented, where he knowingly bypassed contractually agreed procedures for such payments, and/or which were not supported by board directions.

7. It is my understanding that Mr. LeBeau and/or Ms. Jackson apparently instructed the law firm Morrison Tenenbaum, PLLC (“Morrison Tenenbaum”) to pursue this action on behalf of SingularDTV. SingularDTV’s Board never authorized Morrison Tenenbaum to act on its behalf in the SDNY Action. In fact, on November 12, 2021, SingularDTV’s Board specifically resolved that (i) Morrison Tenenbaum does not and never did have authority to represent the Company, and (ii) to the extent that Morrison Tenenbaum was purportedly engaged to represent the Company, such purported engagement is null and void and terminated.

8. SingularDTV retained Kobre & Kim LLP for purposes of representing its interests in this action. A true and correct copy of Board resolution mandating Kobre & Kim LLP as legal counsel to SingularDTV is attached as Exhibit 2. In fact, no engagement agreement between SingularDTV and Morrison Tenenbaum was filed at SingularDTV’s Swiss headquarters, and SingularDTV has no other record of the terms or scope of its purported engagement of Morrison Tenenbaum.

9. Indeed, SingularDTV and, to the best of my knowledge and belief, its actual directors and officers, had no knowledge of the filing of the SDNY Action for months. SingularDTV first became aware of this case fewer than two months ago.

10. Moreover, at the time the SDNY Action was filed on July 13, 2021, Mr. LeBeau had already been terminated as Chief Executive Officer and as a signatory of the Company. This termination took place at a meeting of the Board of Directors on May 27, 2021, and was later reflected in the Swiss Commercial Registry on August 5, 2021. The minutes of the May 27 meeting were distributed to SingularDTV’s shareholders and Directors, including LeBeau, on at least two separate occasions prior to the filing of the SDNY Action.

11. On September 25, 2021, Morrison Tenenbaum filed another complaint on behalf of Mr. LeBeau, both in his personal capacity and as a purported derivative plaintiff for SingularDTV, in the New York Supreme Court (the “NY Supreme Court Complaint”). A true and correct copy of the NY Supreme Court Complaint is attached as Exhibit 3. Morrison Tenenbaum named SingularDTV as a nominal defendant in that action.

12. Neither Mr. LeBeau, Ms. Jackson, nor Morrison Tenenbaum has any current authority to act for SingularDTV. On November 12, 2021, SingularDTV’s Board specifically resolved that (i) Morrison Tenenbaum does not and never did have authority to represent the Company, and (ii) to the extent that Morrison Tenenbaum was purportedly engaged to represent the Company, such purported engagement is null and void and terminated. A true and correct copy of the Board resolution confirming that Morrison Tenenbaum lacks authority to act for the Company is attached as Exhibit 4.

13. What is more, I have also learned that Mr. LeBeau initiated several other legal proceedings concerning SingularDTV, including one lawsuit filed in the name of the Company. Specifically, on June 3, 2021, Mr. LeBeau, through his personal attorney in Switzerland, Paolo Losinger, filed a criminal complaint on behalf of SingularDTV against Arie Levy-Cohen before the Public Prosecutor’s Office in Zug, Switzerland (the “Swiss Criminal Action”). As with Morrison-Tenenbaum, SingularDTV never authorized Mr. Losinger to act in the Company’s name, and when the Swiss Criminal Action was filed, Mr. LeBeau and Mr. Losinger had already been made aware of Mr. LeBeau’s termination as Chief Executive Officer and as a signatory of the Company. On November 3, 2021, SingularDTV’s actual Swiss counsel, Wenger Vieli AG, sent to a letter to the Public Prosecutor’s Office in Zug, Switzerland informing them of this. A true and correct copy of that letter (translated into English) is attached as Exhibit 5.

14. In or about May 2021, a hacker—allegedly using a spoofed e-mail address and allegedly aided by unauthorized access to the Microsoft Outlook account of SingularDTV’s then-general counsel, Carl Volz—impersonated SingularDTV’s Chairman, Arie Levy-Cohen, for the purpose of stealing digital assets from the Company. Allegedly duped by this scheme, on May 6, 2021, Mr. LeBeau (then-Chief Executive Officer of SingularDTV) transferred 76.8 million SNGLS tokens and 11,520,000 SNGJ tokens to two digital wallet addresses provided by the hacker, without Board approval—and without even discussing the transfer with the other SingularDTV Directors, one of whom (Levy-Cohen) was the intended recipient of the funds. LeBeau also failed to apply standard security protocols (for example, running a test transaction and/or confirming the identity of the counterparty through a telephone call). At the time of the transfer, these digital assets were worth approximately US \$2 million. The hacker has since transferred the SNGLS tokens to Binance, an offshore cryptocurrency exchange, making it virtually impossible to recover the assets.

15. In the aftermath of the Hack, SingularDTV’s Chief Technology Officer and managing director, Joseph Lubin, wrote through an attorney to Mr. LeBeau to demand an explanation for Mr. LeBeau’s unilateral and reckless transfer of such substantial Company assets (the “May 8, 2021 Letter”). A true and correct copy of the May 8, 2021 Letter is attached as Exhibit 6. In the May 8, 2021 Letter, Mr. Lubin also insisted that Mr. LeBeau transfer SingularDTV’s digital assets—including the remaining ETH and company SNGLS tokens—to a more secure storage method involving multi-signature protections (*i.e.*, digital asset wallets requiring the consent of multiple digital “signatories” to effectuate any transfer) or to a wallet custodied at the company’s residential bank in Switzerland. In fact, the digital assets were always intended to be held under multi-signature protections, as Lubin and Levy-Cohen had mentioned

during previous board meetings. To the best of my knowledge and belief, Mr. LeBeau refused to explain his conduct during the Hack or the lack of multi-signature protections on the wallet currently holding the digital assets, nor did he offer any commitment to transfer the Company's assets to a custody arrangement protected by industry-standard multi-signature protocols.

16. Attached as Exhibit 7 is a true and correct copy of the minutes from the February 9, 2018 Board meeting.


17. Attached as Exhibit 8 is a true and correct copy of the minutes from the August 27, 2021 Board meeting.

18. Attached as Exhibit 9 is a true and correct copy of the minutes from the September 24, 2021 Extraordinary Shareholders General Meeting.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 26, 2021,

in the City of Zug, Switzerland



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